

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISIONIN RE BOOKER T. WADE JR., ) Case No.: 14-CV-02795-LHK  
Debtor, ) ORDER DENYING EMERGENCY *EX  
PARTE* MOTION FOR TEMPORARY  
RESTRANING ORDER

Before the Court is an Emergency *Ex Parte* Motion for a Temporary Restraining Order, *see* ECF No. 3, brought by Booker T. Wade, Jr. (“Appellant,” “Debtor,” or “Wade”), who has appealed from Bankruptcy Judge Stephen L. Johnson’s Order Denying a Motion to Compel the Custodian to Turnover Property of the Estate, *see* ECF No. 1. For the reasons stated below, the Court DENIES Appellant’s Motion.

**I. BACKGROUND**

Appellant filed a pro se petition for Chapter 11 bankruptcy in Bankruptcy Court on January 22, 2013. Arlene Stevens, who had a long-term business and personal relationship with Appellant, moved the Bankruptcy Court for relief from the automatic stay that results from the commencement of bankruptcy proceedings. Meanwhile, Appellant filed a Motion to Reject Executory Contract in an attempt to undo a contract with Ms. Stevens.

1 On September 5, 2013, the Bankruptcy Court issued an Order Denying Motion to Reject  
2 Executory Contract and Granting Motion for Relief from Stay. That Order describes background  
3 that is instrumental to understanding the instant Motion:

4 Prior to 2009, Debtor and Stevens] were engaged in litigation in the Santa Clara  
5 Superior Court and San Mateo County Superior Court. Subsequently, the two  
6 actions were consolidated. Over the course of two and a half days, the parties to the  
7 litigation, Wade and Stevens, negotiated a comprehensive settlement, under the  
8 supervision of Judge Jamie Jacobs-May. Both Debtor and Stevens were represented  
9 by counsel in that negotiation. At the conclusion of the negotiation, Judge Jacobs-  
10 May put the settlement the parties reached on the court's record. The transcript of  
11 that resolution (the "Transcript") runs 116 pages, and was attached as Exhibit 1 to  
12 the Rejection Motion. Although a written version of the Settlement was not signed  
13 by the parties, both Debtor and Stevens agreed that the terms of the Settlement are  
14 embodied in the 116-page transcript of the settlement conference, dated January 21,  
15 2009.

16 From a reading of the Settlement, it becomes clear Debtor and Stevens were  
17 personally and romantically involved for many years. During that time, they  
18 acquired individually and together, as well as through certain closely held  
19 businesses, both real and personal property. They also participated in the operation  
20 of certain businesses, including Wedding TV, a television station, KMTV. Finally,  
21 they owned certain transmission licenses and equipment. The Settlement clearly  
22 evinces the parties' intention to resolve their disputes, divide their properties and  
23 part ways--for good.

24 To summarize the parties' 116 page settlement discussion is challenging and  
25 unnecessary in this context. The major points of agreement were these: Stevens  
26 would sell real property at 3515 Tripp Road, Woodside, California, and Debtor  
27 would sell real property at 1010 Corporation Way, Palo Alto, and 605 Forest  
28 Avenue, Palo Alto. Stevens would keep the proceeds of the Woodside Property.  
Debtor would keep the proceeds of the Forest Avenue Property. Stevens and Debtor  
would split the proceeds of the Corporation Way property 60%-40%.

29 In addition, Debtor took certain broadcast equipment, and agreed to pay Stevens  
30 \$300,000 for that equipment by giving her a promissory note. The broadcast  
31 licenses held by the parties or their affiliates would be sold and the proceeds  
32 distributed to Stevens and Debtor 70%-30%. Stevens was granted ownership of  
33 certain broadcasts of Wedding TV, a program produced by the parties, and Debtor  
34 agreed to deliver to Stevens the digital computer equipment on which those episodes  
35 were recorded. The parties retained their personal effects, and agreed to split  
36 furnishings based on ownership and use. The parties agreed to present any disputes  
37 about their Settlement to Judge Silver, a JAMS arbitrator who had worked with  
38 them previously.

39 The parties also agreed to prepare a final settlement document reflecting the terms  
40 of their deal. They also agreed, however, that if no final settlement agreement was  
41 drafted, that they would be bound by the deal they placed on the record.

42 According to the declaration of David Hamerslough, Stevens' state court counsel,  
43 the Settlement has been complied with in material respects by Stevens. Among  
44 other things, Stevens sold the real property located 3575 Tripp Road, Woodside,  
45 California, and deposited \$620,000 in proceeds in a separate bank account, pending

1 further order from the state court. Stevens also sold cellular licenses. Counsel is  
2 holding \$176,000 in funds pending further order from the state court. 1010  
3 Corporation Way, Palo Alto, California, was foreclosed by the lender representing  
4 the Small Business Administration before it could be sold. Debtor did not sell the  
real property at 605 Forest Avenue, Palo Alto, California. A broadcast license in  
Topeka, Kansas has not been sold because Debtor was not able to secure the right to  
sell it from co-owners. Debtor did not give Stevens a \$300,000 promissory note.

5 Debtor has made several attempts to set aside the Settlement, generally based on  
6 perceived unfairness or a lack of impartiality on the part of Judge Jacobs-May or  
7 Judge Silver.

8 On May 7, 2009, the Superior Court granted Stevens' motion to enforce the  
Settlement. Debtor moved for a writ of mandamus in the California Court of  
Appeals but that court denied the writ in an order dated December 2, 2009. The  
California Supreme Court denied Debtor's petition for review.

9 On August 26, 2009, Debtor moved to vacate the Settlement. On November 10,  
10 the Superior Court denied that motion.

11 On April 19, 2010, Debtor again moved the Santa Clara Superior Court to vacate the  
Settlement. The motion was denied by an order docketed on June 17, 2010. The  
12 Court of Appeals denied Debtor's petition for a writ of mandamus on September 17,  
2010.

13 *See ECF No. 3, Ex. 3 (footnotes and headings omitted).*

14 The Bankruptcy Court denied the Motion to Reject Executory Contract and granted the  
15 Motion to Lift the Stay, thereby allowing Stevens' state court actions against Appellant to proceed.  
16 The state court entered its judgment resolving the actions on June 13, 2014. ECF No. 3, Ex. 4. That  
17 judgment resolved a number of disputes regarding the settlement agreement, but of principal  
18 import to the instant Motion, the judgment required that Appellant immediately transfer the  
19 property located on Forest Avenue ("the Palo Alto Condo") to Stevens and that Appellant vacate  
20 the Palo Alto Condo within 30 days. *Id.*

21 Meanwhile, on May 6, 2014, Appellant moved the Bankruptcy Court to compel Stevens'  
22 counsel to turnover property of the estate stemming from the sale of a property unrelated to the  
23 Palo Alto Condo. The Bankruptcy Court denied this motion. It is from the Bankruptcy Court's  
24 denial of that motion, which appears unrelated to the instant Motion, that Appellant appealed to  
25 this Court, creating the instant case. *See ECF No. 1.*

26 Subsequently on July 9, 2014, Appellant filed the instant Motion in this Court. *See ECF No.*  
27 3. Appellant has also made a number of filings before the Bankruptcy Court seeking the same relief  
28 as he seeks in the instant Motion. Specifically, Appellant has filed a motion in the Bankruptcy

1 Court for an order declaring as void the state court judgment because that judgment violates the  
 2 automatic stay. See ECF No. 3, Ex. 7. Appellant has also filed an adversary complaint seeking to  
 3 enjoin disposal of the Palo Alto Condo as violating the automatic stay and the Federal Arbitration  
 4 Act. *See* ECF No. 3, Ex. 6.

## 5 **II. LEGAL STANDARD**

6 The standard for issuing a temporary restraining order is identical to the standard for issuing  
 7 a preliminary injunction. *Brown Jordan Int'l, Inc. v. Mind's Eye Interiors, Inc.*, 236 F. Supp. 2d  
 8 1152, 1154 (D. Haw. 2002); *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F.  
 9 Supp. 1320, 1323 (N.D. Cal. 1995). “A plaintiff seeking a preliminary injunction must establish  
 10 that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence  
 11 of preliminary relief, that the balance of equities tips in his favor, *and* that an injunction is in the  
 12 public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (emphasis added).  
 13 The party seeking the injunction bears the burden of proving these elements. *Klein v. City of San*  
 14 *Clemente*, 584 F.3d 1196, 1201 (9th Cir. 2009).

## 15 **III. DISCUSSION**

16 Appellant seeks to stay the effect of the state court’s June 13, 2014 judgment.<sup>1</sup> The crux of  
 17 Appellant’s claim is that the arbitrator, rather than the state court, should have resolved disputes  
 18 regarding the settlement agreement. The Court denies the temporary restraining order because the

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19 <sup>1</sup> In the instant Motion, Appellant also seems to seek an order from this Court staying the  
 20 proceedings pending in the Bankruptcy Court before Judge Johnson while this Court adjudicates  
 21 the appeal of the Bankruptcy Court’s denial of Appellant’s motion to compel. *See* ECF No. 3 at 2.  
 22 However, Appellant has not requested this relief in his proposed order. *Id.* at 28. Moreover,  
 23 Appellant has not requested a stay from the Bankruptcy Court in the first instance, as the Federal  
 24 Rules of Bankruptcy Procedure ordinarily require. *See* Fed. R. Bankr. P. 8005 (“A motion for a  
 25 stay of the judgment, order, or decree of a bankruptcy judge, for approval of a supersedeas bond, or  
 26 for other relief pending appeal must ordinarily be presented to the bankruptcy judge in the first  
 27 instance.”); *In re Zahn Farms*, 206 B.R. 643, 644 (B.A.P. 2d Cir. 1997) (“We are of the view that  
 28 we may not consider the merits of the request for a stay pending appeal, because by their own  
 admission, the Debtors have not complied with the duty imposed by FRBP 8005 to present the  
 request for stay first to the bankruptcy judge from whose order the appeal is taken.”). Furthermore,  
 Appellants’ arguments in the instant Motion are related to the effect of the state court judgment,  
 not the effect of progression of the Bankruptcy Court proceedings. Therefore, the Court cannot find  
 that he has met his burden of proof of establishing the requirements for a stay pending appeal. *In re*  
*Yeganeh*, No. 06-2788, 2006 WL 1310447 (N.D. Cal. May 12, 2006) (holding that “[t]he party  
 seeking a stay must satisfy each of these elements”: 1. Appellant is likely to succeed on the merits  
 of the appeal. 2. Appellant will suffer irreparable injury. 3. No substantial harm will come to  
 appellee. 4. The stay will do no harm to the public interest.”).

1 Court finds that Appellant is unlikely to succeed on the merits of his claim that the state court  
2 judgment was erroneous as such a conclusion is precluded by the *Rooker-Feldman* doctrine.

3 “*Rooker-Feldman* prohibits a federal district court from exercising subject matter  
4 jurisdiction over a suit that is a de facto appeal from a state court judgment.” *Kougasian v. TMSL*,  
5 Inc., 359 F.3d 1136, 1139 (9th Cir. 2004). “If a plaintiff brings a de facto appeal from a state court  
6 judgment, *Rooker-Feldman* requires that the district court dismiss the suit for lack of subject matter  
7 jurisdiction.” *Id.* “It is a forbidden de facto appeal under *Rooker-Feldman* when the plaintiff in  
8 federal district court complains of a legal wrong allegedly committed by the state court, and seeks  
9 relief from the judgment of that court.” *Noel v. Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003).

10 In the instant case, Appellant seeks to stay the effect of the state court’s June 13, 2014  
11 judgment, pursuant to which the Palo Alto condo must be sold. This *Rooker-Feldman* doctrine  
12 precludes this Court from reviewing the state court’s judgment. Appellant’s contention that the fact  
13 that the claims resolved by the state court’s judgment should have been arbitrated is unavailing. To  
14 the extent that Appellant believes the matter should have been arbitrated rather than resolved by the  
15 state court, that contention should have been made in a motion to compel arbitration before the  
16 state court and in appeals of the state court’s order to the state appellate courts to the extent the  
17 state trial court committed any error in ruling upon such a motion. This Court is not the appropriate  
18 forum in which to litigate that issue. *See Brown & Root, Inc. v. Breckenridge*, 211 F.3d 194, 202  
19 (4th Cir. 2000) (“Brown & Root took its best shot on its motion to compel arbitration in the state  
20 courts. It lost in that effort and now seeks to avoid the *Rooker-Feldman* bar by attempting to recast  
21 in various ways what occurred in the state trial court. But no matter how many ways Brown &  
22 Root tries to renovate its claim, the result is the same: Brown & Root cannot obtain what amounts  
23 to appellate review of a state court decision in federal district court.”); *Brown v. Gen. Steel  
24 Domestic Sales, LLC*, No. 08-779, 2008 WL 2128057, at \*5 n.37 (C.D. Cal. May 19, 2008)  
25 (collecting authorities for the proposition that “[f]ederal courts in other circuits have applied the  
26 *Rooker-Feldman* doctrine to state court orders granting or denying motions to compel  
27 arbitration.”). Because the *Rooker-Feldman* doctrine precludes Appellant from succeeding on the  
28 merits of his underlying claim that issues resolved by the state court judgment should have been

1 arbitrated, the Court cannot conclude that Appellant is likely to prevail. Accordingly, Appellant has  
2 not satisfied the first element that he must establish for a temporary restraining order to issue.

3 **IV. CONCLUSION**

4 For the foregoing reasons, the Court DENIES Appellant's Emergency *Ex Parte* Motion for  
5 Temporary Restraining Order.

6 **IT IS SO ORDERED.**

7 Dated: July 10, 2014

  
LUCY H. KOH  
United States District Judge